

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

400W0244

HOUSE COMMERCE AND ENERGY ENGROSSED NO. **HB 1027** - 01/23/2015

Introduced by: The Committee on Commerce and Energy at the request of the Department
of Labor and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the regulation of
2 certain money lending activities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 54-4-36 be amended to read as follows:

5 54-4-36. Terms used in this chapter mean:

6 (1) "Advertisement," a commercial message in any medium that aids, promotes, or
7 assists, directly or indirectly, the sale of products or services;

8 (2) "Business of lending money," includes originating, selling, servicing, acquiring, or
9 purchasing loans, or servicing, acquiring, or purchasing retail installment contracts;

10 (3) "Commission," the State Banking Commission;

11 ~~(3)~~(4) "Director," the director of the Division of Banking of the Department of Labor and
12 Regulation;

13 ~~(4)~~(5) "Division," the Division of Banking;

14 (6) "Duration," the time a loan exists before it is paid off, renewed, rolled over, or



1 flipped:

2 ~~(5)~~(7) "Finance charge," the amount, however denominated, which is the direct or indirect
3 cost payable by a borrower for a loan;

4 ~~(6)~~ ~~"Financing institutions," any person engaged in the business of creating and holding~~
5 ~~or purchasing or acquiring retail installment contracts;~~

6 ~~(7)~~(8) "Installment loan," a loan made to be repaid in specified amounts over a certain
7 number of months;

8 ~~(8)~~(9) "License," a license provided by this chapter;

9 ~~(9)~~(10) "Installment loan contract" or "contract," an agreement evidencing a
10 installment loan transaction;

11 ~~(10)~~(11) "Licensee," any person holding a license;

12 ~~(11)~~(12) "Loan," any installment loan, single pay loan, or open-end loan which may be
13 unsecured or secured by real or personal property;

14 ~~(13)~~ "Nationwide mortgage licensing system and registry," a licensing system developed
15 and maintained by the Conference of State Bank Supervisors and the American
16 Association of Residential Mortgage Regulators for the licensing and registration of
17 licensed mortgage loan originators and other regulated entities;

18 ~~(12)~~(14) "Payday loan," any short-maturity loan on the security of a check, any
19 assignment of an interest in the account of a person at a depository institution,
20 any authorization to debit the person's deposit account, any assignment of
21 salary or wages payable to a person. A short-maturity loan made in
22 anticipation of an income tax refund is not a payday loan for purposes of this
23 chapter;

24 ~~(13)~~(15) "Regional revolving loan fund," a regional revolving loan fund with a service

1 area of at least five South Dakota counties, a designated staff for loan
2 processing and servicing, a loan portfolio of at least one million dollars, and
3 which is governed by a board of directors that meets at least quarterly;

4 ~~(14)~~(16) "Short-term consumer loan," any loan to any individual borrower with a
5 duration of six months or less, including a payday loan. A title loan is not a
6 short-term consumer loan for purposes of this chapter;

7 ~~(15)~~(17) "Title lender," a regulated lender authorized pursuant to this chapter to make
8 title loans; ~~and~~

9 ~~(16)~~(18) "Title loan," a loan for a debtor that is secured by a nonpurchase money
10 security interest in a motor vehicle and that is scheduled to be repaid in a
11 single installment.

12 Section 2. That § 54-4-40 be amended to read as follows:

13 54-4-40. Any person who engages in the business of lending money shall apply for a license
14 as prescribed by this chapter. The applicant shall apply for a license under oath on forms
15 supplied by the division. The application shall contain the name of the applicant's business,
16 proof of surety bond, address of the business, the names and addresses of the partners, members,
17 officers, directors, or trustees, and other information the director may consider necessary. The
18 applicant shall pay an original license fee, as set by rules of the commission promulgated
19 pursuant to chapter 1-26, not to exceed one thousand dollars. If the application of an existing
20 licensee is for an additional location, the application need only include the location and identity
21 of the location manager, plus any changes from the existing license, or such other information
22 the director may consider necessary. Any person may be licensed and maintain a unique
23 identifier through the nationwide mortgage licensing system and registry.

24 The State of South Dakota, any political subdivision of the state, and any quasi-

1 governmental organization created by an executive order of the State of South Dakota and any
2 subsidiary of such organization; any nonprofit corporation formed pursuant to the provisions
3 of chapter 47-22; any nonprofit United States Treasury Community Development Financial
4 Institution, Small Business Administration Certified Development Company, or Regional
5 Revolving Loan Fund; or any commercial club, chamber of commerce, or industrial
6 development corporation formed pursuant to the provisions of § 9-12-11 or 9-27-37 is subject
7 to this chapter but exempt from initial license fees, renewal fees, and surety bond requirements
8 ~~under~~ pursuant to the provisions of this chapter.

9 Section 3. That § 54-4-45 be amended to read as follows:

10 54-4-45. A license expires on ~~July first~~ December thirty-first. To renew a license, the
11 licensee shall file for renewal by ~~June fifteenth~~ December first. The renewal application shall
12 include a renewal fee not to exceed one thousand dollars, as set by rules of the commission
13 promulgated pursuant to chapter 1-26, proof of surety bond, and any other information as
14 required by the director, by rule or order. Any licensee that files for renewal after ~~June fifteenth~~
15 December first and before ~~July first~~ January first of the next calendar year shall pay a late fee
16 in addition to the renewal fee. The late fee, ~~not to exceed~~ shall equal twenty-five percent of the
17 renewal fee, ~~shall be established by the commission in rules promulgated pursuant to chapter~~
18 ~~1-26~~. After ~~June thirtieth~~ December thirty-first, no license may be issued unless an application
19 is filed pursuant to § 54-4-40.

20 Any money lending license issued pursuant to chapter 54-4 that is set to expire on July 1,
21 2015, is extended until December 31, 2015.

22 Section 4. That § 54-4-49 be amended to read as follows:

23 54-4-49. The director may condition, deny, decline to renew, suspend for a period not to
24 exceed six months, or revoke a license for good cause pursuant to chapters 1-26 and 1-26D. If

1 the licensee is the holder of more than one license, the director may condition, deny, decline to
2 renew, suspend for a period not to exceed six months, or revoke any or all of the licenses. For
3 purposes of this section, good cause includes any of the following:

- 4 (1) Violation of any statute, rule, order, or written condition of the commission or any
5 federal statute, rule, or regulation pertaining to consumer credit;
- 6 (2) Engaging in harassment or abuse, the making of false or misleading representations,
7 or engaging in unfair practices involving lending activity; ~~or~~
- 8 (3) Performing an act of commission or omission or practice that is a breach of trust or
9 a breach of fiduciary duty;
- 10 (4) Refusing to permit the director to make any examination authorized by this chapter
11 or rule promulgated pursuant to this chapter, or any federal statute, rule, or regulation
12 pertaining to money lending;
- 13 (5) The licensee or any partner, officer, director, manager, or employee of the licensee
14 has been convicted of a felony or a misdemeanor involving fraud, dishonesty, or
15 breach of trust;
- 16 (6) The licensee or any partner, officer, director, manager, or employee of the licensee
17 has had a license substantially equivalent to a license under this chapter, and issued
18 by another state or jurisdiction, denied, revoked, or suspended under the laws of that
19 state or jurisdiction; or
- 20 (7) The licensee has filed an application for a license which, as of the date the license
21 was issued, or as of the date of an order denying, suspending, or revoking a license,
22 was incomplete in any material respect or contained any statement that was, in light
23 of the circumstances under which it was made, false or misleading with respect to
24 any material fact.

Section 5. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as follows:

Any loan made in South Dakota after June 30, 2015, to a resident of South Dakota, by an entity organized to engage in the business of lending money not licensed or exempt from licensure pursuant to chapter 54-4 is unenforceable and uncollectible except as to any principal extended by the entity to the borrower.

Section 6. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as follows:

No person employed by a licensee to collect or attempt to collect any debt owed or due or asserted to be owed or due may:

(1) Harass, oppress, or abuse a borrower by:

(a) Using any threat of violence or harm;

(b) Publishing a list of names of borrowers who refuse to pay their debts absent providing such information to credit reporting companies;

(c) Using obscene or profane language; or

(d) Repeatedly using the phone with the intent to annoy borrowers;

(2) Use any false statement when attempting to collect a debt by falsely:

(a) Claiming to be an attorney or government representative;

(b) Claiming that the borrower has committed a crime;

(c) Representing that the licensee operates or any person employed by the licensee works for a credit reporting company;

(d) Representing the amount the borrower owes;

(e) Representing the nature and character of any forms sent to the borrower in order to collect a debt;

- 1 (f) Indicating that the borrower will be arrested if the debt isn't paid;
- 2 (g) Using a company name;
- 3 (h) Indicating that the licensee will seize, garnish, attach, or sell a borrower's
- 4 property or wages unless the licensee is permitted by law to take the action and
- 5 the licensee intend to do so;
- 6 (i) Indicating that legal action will be taken against the borrower, if doing so
- 7 would be illegal or if licensee intends does not intend to take the action;
- 8 (3) Give false credit information about the borrower to anyone, including a credit
- 9 reporting company;
- 10 (4) Attempt to collect any interest, fee, or other charge on top of the amount a borrower
- 11 owes unless the contract that created the debt or state law allows the charge;
- 12 (5) Deposit a post-dated check early; or
- 13 (6) Take or threaten to take the borrower's property unless it can be done legally.

14 Section 7. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 The director may use the nationwide mortgage licensing system and registry as a channeling
17 agent for requesting and distributing information to and from other state and federal regulatory
18 officials or agencies with money lending industry oversight authority, as deemed necessary by
19 the director to carry out the responsibilities of this chapter.

20 Section 8. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 The director may establish relationships or contracts with the nationwide mortgage licensing
23 system and registry or other entity designated by the nationwide mortgage licensing system and
24 registry to collect and maintain records and process a transaction fee or other fee related to any

licensee or other person subject to the provisions of this chapter.

Section 9. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as follows:

The following provisions apply to the sharing of information collected and retained by the director during the administration of this chapter:

(1) The provisions of § 51A-2-35 regarding privacy or confidentiality apply to any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including a rule of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. The information and material may be shared with all state and federal regulatory officials with money lending industry oversight authority without the loss of privilege or the loss of confidentiality protections pursuant to the provisions of federal law or § 51A-2-35;

(2) No information or material that is subject to a privilege or confidentiality pursuant to this section is subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the nationwide mortgage licensing system and registry regarding the information or material is waived, in whole or in part, by the person to whom the information or material pertains.

1 This section does not apply with respect to the information or material relating to the
2 employment history of, and publicly adjudicated disciplinary and enforcement actions against,
3 any licensee that is included in the nationwide mortgage licensing system and registry for access
4 by the public.